

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against WISE CHOICE MOVERS, LLC, in the amount of \$22,900	DOCKET TV-180287 ORDER 03
In the Matter of a Penalty Assessment Against WISE CHOICE MOVERS, LLC, in the amount of \$5,000	DOCKET TV-200711 ORDER 01 CONSOLIDATING DOCKETS; IMPOSING AND SUSPENDING PENALTIES SUBJECT TO CONDITIONS

BACKGROUND

- 1 On April 24, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$22,900 penalty (Penalty Assessment) against Wise Choice Movers, LLC, (Wise Choice Movers or Company) in Docket TV-180287 for 235 critical violations of Washington Administrative Code (WAC) 480-15-555, and WAC 480-15-560 through 570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹
- 2 On May 7, 2018, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. On May 15, 2018, Commission staff (Staff) filed a response recommending the Commission reduce the \$21,900 penalty for 219 violations of 40 C.F.R. § 391.45(a) by half, to \$10,950, resulting in a total penalty assessment of \$11,950. Staff further recommended that \$6,700 of the reduced penalty be suspended for a period of two years, and then waived, subject to the conditions that: (1) the Company does not incur any repeat violations of critical regulations; (2) Staff conducts a follow-up safety

¹ WAC 480-15-560 and -570 adopt by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

investigation in two years to review the Company's safety management practices, and (3) the Company pays the \$5,250 portion of the penalty that is not suspended.

3 On July 6, 2018, the Commission entered Order 01, Granting Mitigation to \$11,950; Suspending Penalty, in Part. Order 01 adopted Staff's recommendation in its entirety.

4 On July 10, 2018, the Company and Staff filed with the Commission a proposed payment plan, which the Commission granted on July 16, 2018, by Order 02. The Company paid the \$5,250 portion of the penalty that was not suspended in full.

5 In July 2020, Staff conducted a follow-up investigation as required by Order 01. Staff's investigation found 113 violations of critical regulations, 53 of which were repeat violations. On August 6, 2020, Staff filed with the Commission a Motion to Impose Suspended Penalty based on these repeat violations.

6 On August 10, 2020, the Commission issued a Notice of Opportunity to Respond to Motion to Impose Suspended Penalty.

7 On August 18, 2020, the Commission issued a \$5,000 Penalty Assessment against Wise Choice Movers in Docket TV-200711 for the 113 critical violations of WAC 480-15-560 and WAC 480-15-570 discovered during Staff's follow-up investigation. The Penalty Assessment includes:

- A \$4,600 penalty for 46 repeat violations of 49 C.F.R. § 391.45(a) for using drivers that had not been medically examined and certified on 46 occasions between February 24 and March 22, 2020;
- A \$100 penalty for three repeat violations of 49 C.F.R. § 391.51(b)(6) for failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27;
- A \$100 penalty for three repeat violations of 49 C.F.R. § 391.51(b)(9) for failing to place a note verifying the medical examiner's listing in the National Registry of Certified Medical Examiners, as required by 49 C.F.R. § 391.23(m), in driver qualification files.
- A \$100 penalty for 60 first-time violations of 49 C.F.R. § 396.8(a)(1) for failing to require drivers to make records of duty status on 60 occasions.
- A \$100 penalty for one repeat violation of 49 C.F.R. § 396.25(d) for failing to ensure that each brake inspector meets the minimum qualifications.

- 8 On August 20, 2020, Wise Choice Movers responded to the Penalty Assessment issued in Docket TV-200711, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that it has remedied each of the violations cited in the Penalty Assessment, and that it has implemented procedures to prevent them from reoccurring. The Company also stated that the penalty would cause severe financial hardship due to the economic downturn created by the COVID-19 pandemic. The Company additionally requested the Commission waive the suspended penalty in Docket TV-180287 based on its financial situation.
- 9 On September 2, 2020, Staff filed with the Commission its response to the Company's request for mitigation in Docket TV-180827. Staff recommends no mitigation for those categories of violations for which the Commission assessed a single penalty for multiple violations. For those violations for which the Commission assessed a "per violation" penalty, Staff recommends the Commission reduce the penalty by half. In total, Staff recommends the Commission assess a reduced penalty of \$2,650.

DISCUSSION AND DECISION

1. Consolidation

- 10 Because the same violations gave rise to both Staff's recommendation to impose the suspended penalty in Docket TV-180827 and the Penalty Assessment issued in Docket TV-200711, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-180287 and Docket TV-200711 are consolidated.

2. Penalties

- 11 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.² We address the penalties assessed in each docket in turn.
- 12 First, we agree with Staff's recommendation and assess a reduced penalty of \$2,650 for the violations cited in Docket TV-200711. Staff correctly notes that the single penalties assessed for multiple violations of 49 C.F.R. § 391.51(b)(6), 49 C.F.R. § 391.51(b)(9),

² Enforcement Policy ¶19.

and 49 C.F.R. § 396.8(a)(1), totaling \$300, were minimum penalties. The Commission could have assessed \$6,600 in penalties for these violations, but exercised its discretion to assess a single penalty for each violation category. Accordingly, we find that no further mitigation is warranted.

- 13 With respect to remaining 47 violations, we reduce the penalty by half, to \$2,350. Although these are repeat violations, the Company described in its response that it has corrected the violations and put safety controls in place to prevent future occurrences. We caution the Company, however, that future violations will be subject to escalated enforcement action, including penalties of up to \$1,000 per violation.
- 14 Second, we deny the Company's request to waive the suspended penalty assessed in Docket TV-180827. The conditions of suspension set out in Order 01 were clear, and the Company admits that it failed to meet them. Rather than impose the \$6,700 penalty, we exercise our discretion to continue to suspend it for two more years as discussed in further detail, below.

3. Penalty Suspension

- 15 The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel. The Commission will also consider whether the Company can demonstrate other circumstances exist that convince the Commission to suspend the penalties.³
- 16 In this case, penalties were assessed for both first-time and repeat violations, but the Company satisfactorily demonstrated that it has taken action to prevent each of the violations from reoccurring. In addition, both Wise Choice Movers and the household goods moving industry as a whole have experienced a sharp downturn due to the COVID-19 pandemic. In light of these circumstances, we exercise our discretion to continue to suspend the \$6,700 penalty in Docket TV-180827 and suspend a \$1,450 portion of the penalty in Docket TV-200711, for a total suspended penalty of \$8,150, for two years, and then waive it, subject to the following conditions: (1) the Company may not incur any repeat violations of critical regulations; (2) the Company must pay the \$1,200 portion of the penalty that is not suspended in 12 monthly installments of \$100

³ *Id.* at ¶20.

each beginning October 1, 2020, and (3) Staff will conduct a follow-up safety investigation in two years to review the Company's safety management practices. If the Company fails to comply with any of these conditions, the \$8,150 suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 17 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 18 (2) Wise Choice Movers is a household goods carrier subject to Commission regulation.
- 19 (3) Wise Choice Movers committed 113 critical violations of WAC 480-15 and Title 49 C.F.R., which violated the terms of Order 01 in Docket TV-180827 and gave rise to the penalty assessed in Docket TV-200711.
- 20 (4) Wise Choice Movers does not dispute that the violations occurred.
- 21 (5) The Commission should assess a total penalty of \$2,650 for 113 critical violations of WAC 480-15 and 49 C.F.R. in Docket TV-200711.
- 22 (6) The Commission should deny Wise Choice Movers' request to waive the \$6,700 suspended penalty in Docket TV-180827.
- 23 (7) The Commission should suspend an \$8,150 portion of the combined penalties for period of two years, and then waive it, subject to the conditions set out in paragraph 16, above.

ORDER

THE COMMISSION ORDERS:

- 24 (1) Wise Choice Movers, LLC's request for mitigation of the \$5,000 penalty assessed in Docket TV-200711 is GRANTED, in part, and the penalty is reduced to \$2,650.

- 25 (2) Wise Choice Movers, LLC's request to waive the \$6,700 suspended penalty in Docket TV-180827 is DENIED, and the penalty continues to be suspended as described below.
- 26 (2) The Commission suspends an \$8,150 portion of the combined penalties for a period of two years, and then waives it, subject to the following conditions: (1) Wise Choice Movers, LLC, may not incur any repeat violations of critical regulations; (2) Wise Choice Movers, LLC, must pay the \$1,200 portion of the penalty that is not suspended in 12 monthly installments of \$100 each beginning October 1, 2020, and (3) Staff will conduct a follow-up safety investigation in two years to review Wise Choice Movers, LLC's safety management practices.
- 27 (3) If Wise Choice Movers, LLC, fails to satisfy any of the conditions in paragraphs 16 and 26 of this Order, or fails to comply with the terms of the payment arrangement, the entire unpaid balance of the \$8,150 penalty will become immediately due and payable without further Commission order.
- 28 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective September 11, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Mark Schutter on behalf of
MARK L. JOHNSON
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.